

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

October 20, 2021 at 2:00 p.m.

1.	<u>19-24134-E-7</u> FELIX/DEBORAH KIARSIS <u>21-2036</u>	CONTINUED STATUS CONFERENCE RE: COMPLAINT 6-1-21 [1]
FARRIS V. CARUSO ET AL		

Plaintiff's Atty: J. Russell Cunningham

Defendant's Atty:

Shanna M. Kaminiski [Troy Caruso; Radium2 Capital, LLC; Boris Yankovich]

Bernard J. Lomberg [Wells Fargo Bank, N.A.]

Adv. Filed: 6/1/21

Reissued Summons: 6/14/21

Answer:

7/28/21 [Troy Caruso; Radium2 Capital, LLC; Boris Yankovich]

7/28/21 [Wells Fargo Bank, N.A.]

Cross-Claim filed: 7/28/21 [by Wells Fargo Bank, N.A.]

Answer: none

Nature of Action:

Recovery of money/property - preference

Notes:

Continued by order filed 8/10/21 [Dckt 20]

Joint Status Report and Stipulated Request to Continue Status Conference filed 9/30/21 [Dckt 26] [no order submitted]

The Status Conference is continued to 10:30 a.m. on November 18, 2021
(specially set date and time) to be conducted in conjunction with the hearing on the
Motion to Approve Compromise.

OCTOBER 20, 2021 STATUS CONFERENCE

On September 30, 2021, Plaintiff-Trustee Nikki Farris and Defendants Boris Yankovich and Wells Fargo Bank, N.A. filed their Joint Status Report and Request for Continuance of Status Conference. Dckt. 26. The Parties report that this matter has been settled and a Motion to Approve Compromise will be filed by the Plaintiff-Trustee in the related Chapter 7 bankruptcy case.

The court continues the Status Conference as requested by the Parties, specially setting it for 10:30 a.m. law and motion calendar on November 18, 2021.

2. [21-21751](#)-E-11 BIONICA INC.

**CONTINUED STATUS CONFERENCE
RE: VOLUNTARY PETITION
5-11-21 [\[1\]](#)**

Debtor's Atty: Roderick L. MacKenzie

Notes:

Continued from 8/4/21

Operating Reports filed: 8/16/21 [Jun], 8/16/21 [Jul], 9/23/21 [Aug]

The Status Conference is XXXXXXX
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OCTOBER 20, 2021 STATUS CONFERENCE

The court has previously determined that the Debtor does not qualify as a Subchapter V debtor since its debts exceed the monetary limits. Order, Dckt. 83; Civil Minutes, Dckt. 82. Debtor indicated that it would seek to prosecute this case as a Chapter 11, non-Subchapter V, with the assistance of Chapter 11 bankruptcy counsel. No action has been taken by Debtor to change this case from one under Subchapter V.

On September 23, 2021, Debtor/Debtor in Possession filed the Monthly Operating Report for August 2021. Dckt. 84. For August Debtor/Debtor in Possession reporting having no receipts and (\$10.00) in disbursements. No Monthly Operating Report has been filed for September 2021.

The Subchapter V Trustee filed her Status Report on October 18, 2021. Dckt. 85. No updated Status Report has been filed by the Debtor/Debtor in Possession. The Subchapter V Trustee's Status Report includes noting that during the five months of this case the Debtor/Debtor in Possession has not reported any earned income and that it appears there is little to be administered if the case were converted to one under Chapter 7.

At the Status Conference, XXXXXXX

AUGUST 4, 2021 STATUS CONFERENCE

At the Status Conference, the representative for Bionica reported that the only relating “problems” relate to Dr. Aoki and ADI. The Subchapter V Trustee states that the lingering issue is whether Debtor can qualify for Subchapter V given the amount of the judgment which is on appeal.

Counsel for Aoki reported that the appeal has been dismissed. There was some disagreement as to whether this was dismissed as to the Debtor in Possession/Defendant or just as to other parties in that action. This could effect Debtor’s eligibility for Subchapter V.

A review of the Ninth Circuit case information via PACER indicates that there are two appellate court files. Both relate to the same district court action, E.D. Cal. 2:11-cv-02797. The first is Ninth Circuit Court of Appeals case 21-15518. An order was entered in that Appellate Case file on July 28, 2021 stating that the Appellate having failed to file an opening brief or motion for extension of time to do so, the appeal was dismissed for failure to prosecute. 9th Cir. 21-15518, Dckt. 9.

The Appellants in Ninth Circuit Case 21-15518 are identified as: Gregory Ford Gilbert, Trina Health, LLC, and Trina Health of Newport Beach, LLC. The Debtor in Possession/Debtor are not listed as being an appellant.

The second Ninth Circuit Case is 2:11-cv-02797. An order dismissing that appeal was entered on August 3, 2021. 9th Cir. 2:11-cv-02797, Dckt. 9. For this appeal Thomas T. Aoki, Aoki Diabetes Research Institute, and Bionica, Inc. are listed as appellants.

The Parties have identified several practical, economic, operational issues that need to address, which may resolve a number of disputes. Creditor Aoki asserted that there may be patent infringement claims and injunctive relief that may need to be sought.

Extension of Deadline for Filing Subchapter V Plan

In the court’s May 13, 2021 Order setting the status conference, bar dates, and deadlines, it is ordered that the filing of a plan and lodging of a confirmation hearing order shall be done no later than 90 days following enter of the order for relief in this case. That deadline would expire on August 9, 2021. As addressed at the hearing, such deadline would conflict with and distract the parties from addressing the substantive issues relating to the ability of all parties to have this case prosecuted.

Local Bankruptcy Rule 3017.2 adopted at the request of the Supreme Court pending that court being able to adopt nationwide Subchapter V rules provides for the court to set a deadline and 11 U.S.C. § 1189(b) requires that the plan shall be filed not later than 90 days after the order for relief, “except that the court may extend the period if the need for the extension is attributable to circumstances for which the debtor should not justly be held accountable.”

Here, the request for the continuance is jointly made by the Debtor in Possession/Debtor and the lead creditor, so that they and other creditors can address some operational issues that may lead to a more cooperative prosecution of this case. The Parties have requested that the deadline be extended to September 9, 2021. The court grants the request and shall issue an order so extending the time.

JUNE 22, 2021 STATUS CONFERENCE

This Subchapter V case was filed on May 11, 2021 by Bionica, Inc., the Debtor and Debtor in Possession. Lisa A. Holder is the Subchapter V Trustee. The Order setting the Initial Status Conference required the Debtor/Debtor in Possession to file a status report. No status report has been filed.

On Schedule A/B, Dckt. 17 at 1-8, Debtor states that it had no cash, no bank or other financial accounts, and no real property. Debtor reports having some inventory and tools, and a “factor/warehouse” in which it is a tenant. *Id.* at 6. Debtor/Debtor in Possession’s Monthly Operating Report for May 2021 reports there being \$0.00 in cash or other monies received and no disbursements in connection with the business of the bankruptcy estate. Dckt. 35.

3. [15-20352-E-13](#) **GREGORY/CLARICE BRIDGES** **CONTINUED STATUS CONFERENCE**
[21-2023](#) **RE: COMPLAINT**
4-19-21 [\[1\]](#)
- BRIDGES ET AL V. LONG BEACH**
MORTGAGE CO. ET AL

Plaintiff’s Atty: Peter G. Macaluso
Defendant’s Atty: unknown

Adv. Filed: 4/19/21
Answer: none
Reissued Summons: 5/10/21

Nature of Action:
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:
Continued from 8/4/21, counsel requested a continuance so he can continue discovery of who actually holds the loans at issue.

The Status Conference is XXXXXXX
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OCTOBER 20, 2021 STATUS CONFERENCE

On October 14, 2021, Plaintiffs filed an Updated Status Report. Dckt. 18. Plaintiffs provide a summary of the loan at issue and the transfer of the deed of trust securing the loan. It appears that Plaintiffs assert that service is properly made on the real parties in interest. Further, that no responsive pleadings have been filed by the Defendants.

Plaintiffs then request that this Adversary Proceeding be continued 90 days to allow for Plaintiffs to communicate with Defendants or file a motion for entry of default judgment. This Adversary Proceeding was filed on April 19, 2021. Plaintiff have had one hundred eighty-four (184)

days since the filing of this Complaint to “communicate” with Defendants. If such “communication” was not possible of the past six months, it is unclear at to what another ninety days to “communicate” will serve.

At the Status Conference, **XXXXXXX**

AUGUST 4, 2021 STATUS CONFERENCE

A Certificate of Service (Dckt. 9) was filed on June 2, 2021, attesting to service on Long Beach Mortgage Company and Deutsche Bank Trust Company. No answer or other responsive pleading has been filed, and Plaintiff has not sought the entry of any defaults.

At the Status Conference, counsel request a continuance so he can continue discovery of who actually holds the loans at issue

ANDRICHUK V. CLEAR RECON CORP.

ADVERSARY PROCEEDING
DISMISSED: 9/24/2021

Final Ruling: No appearance at the October 20, 2021 Status Conference is required.

Plaintiff's Atty: Pro Se
Defendant's Atty: Fred T. Winters

Adv. Filed: 5/17/21
Answer: none
Amd. Cmplt. Filed: 7/13/21
Answer: none

Nature of Action:
Recovery of money/property - other
Injunctive relief - other
Declaratory judgment

Notes:
[FTW-2] Order granting Motion to Dismiss Adversary Proceeding filed 9/24/21 [Dckt 54]

<p>The Adversary Proceeding having been dismissed (Orders, Dckts. 43, 47, 54), the Status Conference is concluded and removed from the calendar.</p>

The Adversary Proceeding having been dismissed and Plaintiff not having requested leave to file an amended complaint (Order, Dckt. 54), the Clerk of the Court may close the file for this Adversary Proceeding.

5. [20-25057-E-7](#) **DAVID FLETCHER**
[21-2040](#)

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
6-7-21 [1](#)

HUSTED V. FLETCHER

Final Ruling: No appearance at the October 20, 2021 Status Conference is required.

Plaintiff's Atty: J. Russell Cunningham
Defendant's Atty: unknown

Adv. Filed: 6/7/21
Answer: none

Nature of Action:
Recovery of money/property - turnover of property
Recovery of money/property - preference
Recovery of money/property - fraudulent transfer

Notes:
Continued from 8/4/21

This Adversary Proceeding having been dismissed (Order, Dckt. 17), **the Status Conference is concluded and removed from the Calendar.**

The Clerk of the Court may close the file for this Adversary Proceeding.

EDMONDS V. BETTENCOURT

ADVERSARY PROCEEDING
CLOSED 10/12/21

Final Ruling: No appearance at the October 20, 2021 Status Conference is required.

Plaintiff's Atty: Steven S. Altman
Defendant's Atty: unknown

Adv. Filed: 12/4/20
Answer: none
Reissued Summons: 2/3/21
Reissued Summons: 4/28/21

Nature of Action:
Recovery of money/property - turnover of property

Notes:
Continued from 8/4/21 to allow counsel to address what service of the motion for default judgment is required when service of the summons and complaint have been by publication.

Memorandum/Letter re Service by Publication re Default filed 8/16/21 [Dckt 36]

[SSA-2] Notice of Hearing on Request for Entry of Default Judgment by Plaintiff Irma Edmonds, Chapter 7 Trustee filed 8/26/21 [Dckt 38]; Order granting filed 9/24/21 [Dckt 44]

Adversary Closed 10/12/21

<p>The Adversary Proceeding having been dismissed (Order, Dckt. 44) and the file closed, the Status Conference is concluded and removed from the Calendar.</p>

**HOPPER V. NAVY FEDERAL CREDIT
UNION ET AL**

Plaintiff's Atty: J. Russell Cunningham

Defendant's Atty:

Unknown [Kelstin Group, Inc.; Patelco Credit Union; SolarCity Corporation; Tesla, Inc.]

Bryan M. Grundon [Navy Federal Credit Union]

Adv. Filed: 6/7/21 [reissued Summons 7/22/21]

Answer: 7/12/21

Nature of Action:

Validity, priority or extent of lien or other interest in property

Notes:

Continued from 8/4/21

The Status Conference is XXXXXXX
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OCTOBER 20, 2021 STATUS CONFERENCE

Nothing further has been filed by Plaintiff-Trustee or the responding Defendant since the August 4, 2021 Status Conference. No action has been taken by Plaintiff-Trustee concerning any of the named defendants who have not responded to the Complaint.

At the Status Conference, XXXXXXX

AUGUST 4, 2021 STATUS CONFERENCE

The Parties filed their Joint Status Conference Statement on July 28, 2021. Dckt. 28.

SUMMARY OF COMPLAINT

The Complaint filed by J. Michael Hopper, the Plaintiff-Trustee, Dckt. 1, asserts claims to Determine the Extent, Validity, and Priority of Liens against property of the bankruptcy estate. One named Defendant has responded, and two others have not, with the court dismissing the requests for entry of default due to service of process issues. The Plaintiff-Trustee is addressing those issues.

SUMMARY OF ANSWER

Navy Federal Credit Union ("Defendant-NFCU") has filed an Answer, Dckt. 7, admitting and

denying specific allegations. Defendant-NFCU also asserts an affirmative defense pursuant to California Code of Civil Procedure § 697.430.

8. [10-22378-E-13](#) **DEREK/ALISA FREEMAN** **CONTINUED STATUS CONFERENCE**
[21-2010](#) **RE: COMPLAINT**
FREEMAN ET AL V. HFC ET AL 2-2-21 [1]

Plaintiff's Atty: Timothy J. Walsh
Defendant's Atty: unknown

Adv. Filed: 2/2/21 [Reissued Summons 6/22/21]
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property

Notes:
Continued from 8/4/21 to afford Plaintiff the time to diligently prosecute the entry of the defaults and the prosecution of a noticed motion for entry of default judgment.

The Status Conference is XXXXXXX
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OCTOBER 20, 2021 STATUS CONFERENCE

Nothing further has been filed by Plaintiff-Debtor since the August 4, 2021 Status Conference. No action has been taking with respect to the asserted defaults by the Defendants.

At the Status Conference, XXXXXXX

AUGUST 4, 2021 STATUS CONFERENCE

On August 2, 2021, Plaintiff filed a Status Conference Report. Dckt. 13. The report that though served, the named Defendants have not responded, and Plaintiff will be seeking the entry of their defaults and then filing a noticed motion for entry of a default judgment.